

DEPARTMENT OF STATE REVENUE
REVENUE RULING ST 97-09

January 28, 1998

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Purchase of Materials, Equipment and Supplies

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-2.5-3-1, USAir, Inc. v. Indiana Department of State Revenue, 623 N.E.2d 466 (Ind. Tax 1993)

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of materials, equipment and supplies that are placed in an Indiana warehouse for subsequent distribution.

STATEMENT OF FACTS

The taxpayer is a corporation engaged in the retail gasoline service station business. The taxpayer purchases materials, equipment and supplies that are used in its business and places these items in an Indiana warehouse.

The following is the detail of these purchases:

1. The purchased materials consist of items of palletized tangible personal property, including, but not limited to; paper towels, toiletry items, mops, brooms, advertising materials, sundry miscellaneous supplies, pump parts, couplers, valves, etc.
2. The taxpayer has either paid Indiana sales tax to vendors or accrued and paid Indiana use tax on these material purchases.
3. The purchased items are for use primarily in a five state region (Indiana, Illinois, Ohio, Michigan and Wisconsin). The ultimate state of use is determined as various supply orders are received and filled at the Indiana warehouse.
4. To fill orders, the pallets of consumable supplies are separated, sorted, and loaded onto delivery trucks which deliver to retail service stations throughout the various marketing states. The same procedures are followed regarding the delivery of miscellaneous pump parts, couplers, valves, etc.
5. The taxpayer is currently under audit by a state other than Indiana. This state has held that the taxpayer owes use tax to this state on items being delivered for use and consumption at retail service stations in that state. The state contends that the taxpayer only temporarily stored the merchandise in Indiana for consumption in other states and should have been placed tax free in the Indiana warehouse.

It is the taxpayer's contention that they exercised control and use over the palletized supplies and equipment when it delivered, sorted, packaged and directed loading of the ordered items onto specific trucks destined for specific retail service station locations. The taxpayer, therefore, believes that it properly acted in good faith by paying Indiana sales/use tax to the Indiana Department of Revenue. Further, the taxpayer believes that the exercise of control over the owned merchandise invalidates the Indiana storage exception. The taxpayer cites USAir, Inc. v. Indiana Department of State Revenue, dated November 8, 1993, as authority for this conclusion.

DISCUSSION

IC 6-2.5-2-1 imposes sales tax on a retail transaction completed in Indiana unless it is exempt under IC 6-2.5-5. IC 6-2.5-5-24(b) states in part that a transaction is exempt if it would be exempt from gross income tax under IC 6-2.1-3-3. To be exempt under this statute, the taxation of the transaction must be prohibited by the United States Constitution. This is an indirect reference to the Commerce Clause, and it would exempt transactions between the states from taxation. Under the facts of this case, the transactions are completed in Indiana and therefore the sales tax is validly imposed.

IC 6-2.5-3-2 imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction (transfer of tangible personal property for consideration), regardless of the location of that transaction or of the retail merchant making that transaction, unless the transaction is exempt under IC 6-2.5-3-4. Under this statute, the use tax would not apply to any transaction on which Indiana sales tax was validly paid.

Use tax will also not apply to a transaction that comes under the storage exception of IC 6-2.1-3-1(b). IC 6-2.5-3-1(a) defines "use" as "the exercise of any right or power of ownership over tangible personal property." IC 6-2.5-3-1(b) defines "storage" as "the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana." The taxpayer's purchase and storage of materials, equipment and supplies in an Indiana warehouse for subsequent distribution outside Indiana falls within this

"storage exception" for use tax found in IC 62.5-3-1(b), unless the taxpayer's separating, sorting, packaging, loading and transporting of the palletized materials, equipment and supplies is considered to be "use" in Indiana. The Indiana Tax Court in USAir, Inc. v. Indiana Department of State Revenue, 623 N.E.2d 466 (Ind. Tax 1993), held that it is impossible for property to go from "storage" in Indiana to "use" elsewhere without some "incidental handling or transport"; however, this is not "taxable use". In the facts of the instant case, the separating, sorting, packaging, loading in Indiana and transporting outside Indiana of the palletized materials, equipment and supplies by the taxpayer clearly exceeds "incidental handling or transport", hence, the taxpayer's purchase of same is subject to use tax.

Although it is true that a transaction may be subject to tax in more than one state under appropriate circumstances, the second state should be allowing a credit against its use tax for any validly imposed sales or use tax in the first state as Indiana would do in the reverse situation under IC 6-2.5-3-5(a).

RULING

The Department rules that the taxpayer's purchase of materials, equipment and supplies that are placed in an Indiana warehouse for subsequent distribution in and outside Indiana is subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.